IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 386 OF 2006

Chandrakant Damodar Kunte. .. Petitioner .

vs.

Aparna Ashok Kunte

& Anr. . .. Respondents.

Mr. V.A. Shastry for petitioner.

Mr. P.S. Dani for Respondents.

CORAM : A.P. DESHPANDE, J.

DATE : 28th November, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The present petitioner and the respondent no. 2 herein are real brothers, whereas the respondent no. 1 is wife of respondent no. 2. The respondents instituted a civil suit bearing no 49/03 for partition and separate possession besides claiming injunction. It is the case of the respondents in the said suit that the parties had

partitioned the joint family property on 23.3.2003 and pursuant to the said partition a claim is made in the said suit, whereas the present petitioner thereafter filed yet another suit bearing no. 121/03 wherein the petitioner is claiming that on the same day on which the partition is alleged to have been effected, the mother of the petitioner and respondent no. 2 has executed a gift deed in favour of respondent no. 1 (the daughter-in-law). The petitioner has prayed in his suit that the partition allegedly executed on 23.3.2003 is not legal and proper and should not be acted upon. Other reliefs are also claimed.

3. In the suit instituted by the present respondents, the trial court has granted injunction whereas in the Misc. Civil Appeal the First Appellate Court has passed an order directing the parties to maintain status quo. The order passed by the district Judge in Misc. Civil Appeal is dated 21.7.2003. At a later point of time and to be precise on 29.9.2005, the present petitioner moved an application for amendment of the plaint in a suit instituted by the petitioner claiming that on account of the order passed by the District Judge, directing maintenance of status quo, the respondents have interfered with the agricultural activities of the petitioners which has resulted in damages being caused to the petitioner. It was thus contended

that as during the pendency of the suit the petitioner has suffered damages, the amendment be permitted. The trial court has rejected the amendment application and aggrieved thereby the present writ petition has been filed.

4. The learned counsel for the petitioner submits that the trial court has committed a patent illegality in rejecting the amendment application and thus seeks indulgence of this court. Per contra, the learned counsel appearing for the respondents has mainly contended that the amendment application is malafidely filed with a view to oust the jurisdiction of the Civil Court, Junior Division. It is submitted that the petitioner has claimed damages for the period of three years whereas the order of status quo was operating for a period of less than two years when the application for amendment was filed. If that be so, then the claim for damages could not have been for more than the period of two years. In all fairness, the learned counsel for the respondents submits that if the claim is restricted for the period of two years preceding the date of filing of the amendment application then the respondents have no objection for allowing the said amendment. Responding in the same spirit, the learned counsel for the petitioner makes a statement that the petitioner is ready and willing to restrict the claim for damages for the

period of two years preceding the date of the filing of the amendment application so that the jurisdiction of the civil court, junior division is not ousted. The said statement is made by the learned counsel for the petitioner on taking instructions from the petitioner who is present in the court. I accept the statement that the petitioner is restricting his claim for damages for a period of two years, preceding the date of filing of the amendment application. In view of the concession mad by the counsels referred to hereinabove, the present writ petition is partly allowed. The amendment application is allowed restricting the claim for damages for the period of two years preceding the date of filing of the amendment application which, is in the sum of Rs. 80,000/-

5. Rule is made absolute in the above terms. Needless to mention that on account of allowing the amendment, the respondents shall be allowed to file written statement touching the amended plaint.

(A.P. Deshpande, J.)